SUPREME COURT OF THE UNITED STATES

No. 362.—October Term, 1958.

Raymond Jerean Koller and Martin Silverbrook, Petitioners, v. United States of America.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[April 20, 1959.]

Per Curiam.

The judgment is affirmed. *Rex Trailer Co.* v. *United States*, 350 U. S. 148 (1956).

Mr. Justice Stewart, with whom Mr. Justice Douglas and Mr. Justice Whittaker join, dissenting.

I do not agree that disposition of this case is controlled by the decision in *Rex Trailer Co.* v. *United States*, 350 U. S. 148. Believing that § 26 (b)(1) of the Surplus Property Act of 1944, 40 U. S. C. § 489 (b)(1), imposes a civil penalty, and that an action thereunder is therefore subject to the five-year limitation provided in 28 U. S. C. § 2462, I would reverse. Cf. *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537; *Erie Basin Metal Products, Inc.*, v. *United States*, 150 F. Supp. 561 (Ct. Cl.). *See Priebe & Sons* v. *United States*, 332 U. S. 407.